

1970

## Tort - Common Carrier - Duty of Care

Paul F. Barchie

Follow this and additional works at: <https://dsc.duq.edu/dlr>



Part of the [Torts Commons](#)

---

### Recommended Citation

Paul F. Barchie, *Tort - Common Carrier - Duty of Care*, 9 Duq. L. Rev. 141 (1970).

Available at: <https://dsc.duq.edu/dlr/vol9/iss1/20>

This Recent Decision is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.

## Recent Decisions

One should not be permitted to benefit from an agreement, the performance of which is in direct violation of a significant state law, unless compelling equities<sup>43</sup> intervene to justify such enforcement.

Thomas M. Schultz

**TORT—COMMON CARRIER—DUTY OF CARE**—The Supreme Court of Pennsylvania has held that a common carrier is not the guardian of its passengers' financial interests and thus has no duty to secure the name and license number of individuals involved in traffic accidents with cabs when the cab driver in no way caused the accident.

*Stupka v. Peoples Cab Company*, 437 Pa. 509, 260 A.2d 512 (1970).

The plaintiff was a passenger in a taxicab operated by the defendant when it was struck in the rear by another vehicle. The taxicab was not moving at the time of the accident and there is no claim that the accident was, in any way, caused by the actions of the cab driver. It appears from the facts that, immediately after the accident, the cab driver approached the driver of the other vehicle, spoke with him, but did not secure his name or license number before the unknown driver left the scene of the accident. Plaintiff's theory was that the taxicab driver owed her a duty to secure this information, and that his failure to do so constituted a breach of the duty a carrier owes to its passenger, and therefore, it should be liable for her injuries since this breach deprived her of an action against the hit-and-run driver for these injuries.

The Court of Common Pleas of Allegheny County held that the carrier owed no duty to the passenger to investigate the facts of the accident so as to aid the passenger in possible future litigation, and therefore, sustained the defendant's preliminary objection. This decision was affirmed by the Supreme Court of Pennsylvania.<sup>1</sup> Justice

43. In *Simms v. Simms*, 31 Misc. 2d 882, 884, 221 N.Y.S.2d 1020, 1022 (Sup. Ct.), *aff'd*, 16 App. Div. 2d 806 (1961), the annulment decision, the court found that the parties were aware of the existing relationship. In confronting the defendant's (petitioner in the instant case) allegation of fraud the court stated that the testator's alleged representations were ones of law and therefore not sufficient to maintain an action for fraud. However, the court did admit that the allegations were sufficient to establish a confidential relationship, but the instant court made no mention of this its opinion.

1. *Stupka v. Peoples Cab Company*, 437 Pa. 509, 260 A.2d 759 (1970).

Cohen,<sup>2</sup> speaking for the majority, ruled that the cab company does have a duty to protect its passengers physical well-being "even when the injury is no fault of the carrier's." The court stated however that "[t]he interest in the passenger's financial well-being . . . seems of a much lesser magnitude and not of sufficient weight to overcome the traditional judicial reluctance to impose affirmative duties."<sup>3</sup> The court reasoned that the imposition of a duty in this case would be "a step towards making a common carrier the guardian of all its passengers' interests. . . ."<sup>4</sup>

The issue presented by this case is whether or not a common carrier owes a duty to its passengers to prevent not only physical harm but also financial harm resulting from the actions of a third party. In resolving this question the court first turned to the Restatement which states that

[a] common carrier is under a duty to its passengers to take reasonable action (a) to protect them against unreasonable risk of physical harm, and (b) to give them first aid after it knows or has reason to know that they are ill or injured, and to care for them until they can be cared for by others.<sup>5</sup>

The legal duty imposed by the Restatement has been applied only in cases involving a passenger's well-being and is applicable whether or not the injury was caused by the carrier. The court would not impose a duty based on this section since we are concerned with a passenger's financial interests in the instant case.

Since we have no cases in Pennsylvania supporting the plaintiff's contention does this mean she is not entitled to damages? The answer to this question can only be obtained by determining what duty a carrier owes to its passengers. "While a carrier is not bound to anticipate unusual and unexpected perils to its passengers . . . yet its servants must be diligent at all times in protecting passengers from danger by the exercise of the highest degree of care which is reasonably practicable."<sup>6</sup> Is it "unusual and unexpected" that a driver involved in an accident will leave the scene of the accident never to be heard from

---

2. Justice Jones filed a concurring opinion. Justice O'Brien filed a dissenting opinion in which Justice Roberts joined.

3. *Stupka v. Peoples Cab Company*, 437 Pa. 509, 513, 260 A.2d 759, 761 (1970).

4. *Id.* at 512, A.2d at 761.

5. RESTATEMENT (SECOND) OF TORTS § 314A (1965); Case law supports this position. *Yazoo and M.V.R.R. v. Byrd*, 89 Miss. 308, 42 So. 286 (1906); *Korn v. Tamiami Trail Tours, Inc.*, 108 Ga. App. 510, 133 S.E.2d 616 (1963).

6. *Mack v. Pittsburgh Rys. Co.*, 247 Pa. 598, 602, 93 A. 618, 619 (1915).

## Recent Decisions

again? The "high degree of care" owed by a carrier to its passengers is espoused in many cases. Although they all involve physical injuries they do not necessarily exclude a situation as in this case.<sup>7</sup>

The majority felt that, at most, the defendant had a moral obligation to act; there was no affirmative duty. "Common law courts have been reluctant to impose affirmative duties on individuals even in situations in which most people would feel under a moral obligation to act."<sup>8</sup> The Restatement supports this position<sup>9</sup> as does *Yania v. Bigan* in which the court states:

Lastly, it is urged that Bigan failed to take the necessary steps to rescue Yania from the water. The mere fact that Bigan saw Yania in a position of peril in the water imposed upon him no legal, although a moral, obligation or duty to go to his rescue unless Bigan was legally responsible, in whole or in part, for placing Yania in the perilous position.<sup>10</sup>

The court attributed this stand to the "'rugged individualism' approach of the common law and 'the feeling that it is a more serious restraint on personal freedom to require a person to act than it is to place limits on his liberty to act.'" <sup>11</sup>

The distinction made between a moral and a legal duty may have been unnecessary in this case. Perhaps the Motor Vehicle Code imposes a legal duty where normally a moral duty would exist. The Motor Vehicle Code requires the operator of any motor vehicle involved in an accident resulting in bodily injury, to furnish a report of the accident to the Department of Motor Vehicles, upon forms furnished by the department.<sup>12</sup> These forms require the identity of the operators to be supplied. The statute creates a duty and failure to comply with the statute may result in a fine of \$10 or 10 days in jail. Is this duty owed only to the Commonwealth or does it also extend to individuals? If this duty is owed to individuals then the inquiry need go no further. The defendant would be liable for plaintiff's injuries since its employee failed to comply with the statute. Justice Cohen, however,

---

7. *Brown v. Ambridge Yellow Cab Co.*, 374 Pa. 208, 97 A.2d 377 (1953).

8. *Stupka v. Peoples Cab Company*, 437 Pa. 509, 511, 260 A.2d 759, 760 (1970).

9. RESTATEMENT (SECOND) OF TORTS § 314 (1965). It provides: "The fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon him a duty to take such action."

10. *Yania v. Bigan*, 397 Pa. 316, 321, 155 A.2d 343, 346 (1959).

11. *Stupka v. Peoples Cab Company*, 437 Pa. 509, 511, 260 A.2d 759, 761 (1970); See generally H. McNeice & J. Thornton, *Affirmative Duties in Torts*, 58 YALE L.J. 1272 (1949).

12. PA. STAT. ANN. tit. 75, § 1217 (1960), as amended, (Supp. 1970).

felt this solution would be imposing a stiffer penalty for noncompliance than the statute calls for since the defendant would be liable not just for the nominal fine of \$10, but the total amount of damages suffered by the plaintiff.<sup>13</sup>

An alternative to this statutorily created duty would involve formulating a guideline as an aid in defining the scope of duty. This very approach was attempted as far back as 1883, in the case of *Heaven v. Pender*.<sup>14</sup> Brett's dictum states that

[W]henver one person is by circumstances placed in such a position with regard to another that everyone of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger.<sup>15</sup>

It would appear that this test does not make a distinction between physical and financial well-being and both would be protected. As Justice O'Brien, dissenting in *Stupka*, points out "[t]he law has striven, through damages for pain and suffering, to equate physical and financial well-being."<sup>16</sup>

In the instant case the court concluded that often "[a]n individual's financial interests can be so complex and varied that we should not require the carrier to be cognizant of them and responsible for furthering and protecting them."<sup>17</sup> The result of this is that plaintiff is denied recovery because her financial, and not her physical well-being was aggravated by the defendant's failure to act.

Paul F. Barchie

13. *Stupka v. Peoples Cab Company*, 437 Pa. 509, 513 & n.2, 260 A.2d 759, 761 & n.2 (1970).

14. 11 Q.B.D. 503 (1883).

15. *Id.* at 509. Some authors feel that this principle was denied by Brett when he became Lord Esher. C. Gregory, *Gratuitous Undertakings And The Duty of Care*, 1 DEPAUL L.R. 30, 47. However, upon a reading of the case in which the supposed denial took place, it appears that the principle would still apply in personal injury cases. *LeLievre v. Gould*, 1 Q.B. 491 (1893).

16. 437 Pa. at 517 n.1, 260 A.2d at 762 n.1.

17. *Id.* at 513, A.2d at 762.